CRL.A.No.786 OF 2004

The Petitione/Accused was directed to be released on bail in and by the order of this Court dated 13.4.2004 in Crl.M.P.No. 5463/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.786 of 2004

K.Arjunan .. Petitioner/Accused

vs.

The State:
The Sub-Inspector of Police,
B-4, Race Course Police Station,
in Cr.No.1006/2000,
Coimbatore, .. Respondent/Complainant

Prayer: This Revision petition has been preferred against judgment dated 15.4.2004 made in Crl.A.No.150 of 2003 on the file of the Additional District and Sessions Judge, (FTC-II), Coimbatore, confirming the judgment in C.C.No.61 of 2001 on the file of the Judicial Magistrate No.III, Coimbatore, dated 20.05.2003.

For Petitioner : Mr.T.Arockia Dass
For Respondent : Mr.V.R.Balasubramanian,
Additional Public Prosecutor.

JUDGMENT

This revision petition has been preferred by the accused in C.C.No.61 of 2001 on the file of the Judicial Magistrate No.III, Coimbatore, who has been charged under Section 379 IPC for having committed theft of gold chain weighing 4 1/2 sovereigns.

2. The case was taken on file by the learned Judicial Magistrate No.II, Coimbatore, and on appearance of the accused on summons copies under Section 207 of Cr.P.C., were furnished to the accused and when charge under Section 379 IPC was framed against the accused and explained to him he pleaded not guilty.

3. Before the trial Court P.W.1 to P.W.8 were examined and Ex.P.1 to

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Ex.P.7 were exhibited and M.O.1 to M.O.4 were marked.

4. According to P.W.1, 22.12.2000 at about 9.30 pm while he along with his wife P.W.2 were returning after attending to a function in Appasamy College, the accused came behind in TVS-50 while crossing them suddenly snatched away the gold chain from the neck of his wife and began to run away from the seen of occurrence after leaving his moped at the place of occurrence and that at about 10.15 pm he preferred Ex.P.1-complaint with the police after handingover the moped used by the accused at the time of occurrence. He also identified M.O.1 as the chain snatched by the accused.

5. P.W.2 is the wife of P.W.1. P.W.2 would corroborate the evidence of P.W.1 to the effect that on the day and at the time of occurrence while she was returning after attending the college function along with her husband P.W.1, the accused who came in a two wheeler snatched away 4 1/2 sovereigns of gold chain from her neck and ran away after leaving the moped and that her husband P.W.1 preferred a complaint with the police and after some time the police handed over the chain to her. She would further depose to the effect that she had polished the chain and this fact was not known to P.W.1.

6. P.W.3, an eye witness to the occurrence, would depose that he saw the occurrence which took place on 22.12.2000 at about 9.30 pm. He would go one step further and depose that he along with P.W.1 caught hold of the accused and handed over him to the police.

7. P.W.4 and P.W.5 are mahazar witnesses. P.W.6 is the recovery mahazar witness, all of them turned hostile.

8. P.W.7 is another recovery mahazar witness, who would depose that the police arrested the accused on 23.12.2000 at 8.30 pm before the 'Dinamani" Daily's office and the accused voluntarily gave a confession statement to the police, which is Ex.P.4, recorded by the police in his presence. Ex.P.5 is the mahazar for the recovery of the chain from the shirt pocket of the acussed.

9. P.W.8 is the Investigating Officer, who had registered the case in Cr.No.1006/2000 on the basis of Ex.P.1-complaint preferred by P.W.1. He had visited the place of occurrence and prepared mahazar and rough sketch (Ex.P.7) in the presence of witnesses and arrested the accused and recorded his confession and on the basis of the confession has recovered the property. After completing the investigation, he has filed the charge sheet against the accused under Section 379 IPC.

10. When incriminating circumstances were put to the accused, the accused has denied his complicity with the crime. After going through the oral and documentary evidence, the learned trial Judge has come to the conclusion that the prosecution has proved the guilt of the accused beyond

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any reasonable doubt and accordingly convicted and sentenced the accused to undergo 3 months RI and slaped a fine of Rs.1,000/- with default sentence.

11.Aggreived by the findings of the learned trial judge the accused preferred an appeal before the Court of Sessions. The learned first appellant judge FTC-II, Coimbatore, after hearing both sides has dismissed the appeal thereby confirming the findings of the learned trial judge, which necessitated the accused to knock at the doors of this Court.

12.Now the point for determination in this revision petition is whether the judgment in C.A.No.150 of 2003 on the file of the Additional Sessions Judge, (FTC-II), Coimbatore, is liable to be set aside for the reasons stated in the memorandum of revision?

13.The Point:- The learned counsel Mr.T.Arockia Dass appearing for the revision petitioner would contend that both the courts below have not meticulously scanned the evidence available before them and unfortunately an innocent person has been convicted by both the Courts below. The learned counsel for the revision petitioner would place before this Court the infirmities looming large in this case. According to the prosecution, P.W.3 is an eye witness to the occurrence. Even though he would depose on the side of the prosecution to the effect that on the date of occurrence at the time of occurrence the accused has snatched M.O.1-chain from the neck of P.W.2, P.W.3 will go one step further and say that the accused was caught hold of by both P.W.1 and himself and produced before the police. This very fact cuts at the root of the prosecution case because, according to P.W.1, after committing the offence the accused ran away from the place of occurrence with the property stolen, leaving his moped-M.O.4. Nowhere P.W.1, the husband of P.W.2 who also accompanied P.W.2 at the time of occurrence has stated that he caught hold of the accused after the commission of the offence. It is the case of P.W.1 that he received back the gold chain-M.O.1 from the police few days after the occurrence. On the other hand so called eye witness P.W.3 would depose in his cross-examination that the chain was handed over to the police by them at the time they produced the accused before the police. He has further stated that at the time when M.O.1-chain was handed over to the police it was found broken. But P.W.2 in her evidence would say that after receiving the chain from the police she had polished the same which was not known to her husband P.W.1. P.W.2 in her cross-examination would admit that before the Investigating Officer she has not said that the accused was handed over by P.W.1 along with P.W.3 to the police. If we rely on the evidence of P.W.3, an eye witness to the occurrence, then the entire case of the prosecution that the chain was recovered from the accused under Section 27 of the Indian Evidence Act falls to the ground because according to P.W.3 the accused was handed over to the police by him along with P.W.1. The evidence of P.W.8, the Investigating Officer, is diametrically opposed to

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the evidence of P.W.3. According to P.W.8, the accused was arrested on 23.12.2000 at 20.30 hours at 'Dinamani' Daily's office, Coimbatore, which is not the case of P.W.3. Under such circumstances, it cannot be said that the prosecution has proved the guilt of the accused beyond any reasonable doubt. Certainly the benefit of doubt shall inure in favour of the accused. Unfortunately both the Courts below without weighing the evidence properly have come to an erroneous conclusion that the accused is guilty under Section 379 IPC, which warrants interference from this Court. Point is answered accordingly.

14. In the result, the revision petition is allowed and the judgment in C.A.No.150 of 2003 on the file of the Addtional Sessions Judge, FTC-II, Coimbatore, is hereby set aside and the accused is acquitted from the charges levelled against him. Bail band shall stand cancelled.

ssv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Judicial Magistrate No.III, Coimbatore.

2.The Chief Judicial Magistrate, Coimabtore.

3.The Additional District and Sessions Judge,
(FTC.II), Coimbatore.

4.The Principal District & Sessions Judge,
Coimbatore.

5.The Superintendent of Police, Central Prison,
Coimbatore.

6.The Public Prosecutor, High Court, Madras.

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